



Guardianship and Conservatorship Pilot Programs

Report to Governor Butch Otter and the Second Regular Session of the 59th Idaho Legislature

Pilot Guardianship Monitoring Programs Implemented to Address Needs of Elderly, Minors and other Incapacitated Persons per Legislative Mandate of 2005

In 2005, House Bill 131 provided the Idaho Supreme Court with another opportunity to utilize its highly successful “problem-solving court” model of cooperation with other branches of government in addressing the needs of a critical and rapidly expanding segment of Idaho’s citizens – the elderly, minors and other incapacitated persons. Well documented shifts in demographics – the “boomer effect” – have resulted in a substantial increase in older citizens and societal developments (such as the extraordinary impact of the methamphetamine epidemic in Idaho) have resulted in large numbers of grandparents raising grandchildren through guardianship and conservatorship authority.

The number of new guardianship and conservatorship cases increased by 20% in 2006 over the number filed in 2005.

In 2007, it is projected that the number of newly filed cases will be 1,300 — another increase of almost 10%.

Guardianship and conservatorship cases are court proceedings where both the physical care-taking and management of assets of the elderly, minors or otherwise incapacitated individuals have been assumed, through the courts, by a third party – often relatives, but also including professionals and institutions. Prior to HB 131 (enacting pilot projects described in *Idaho Code § 31-3201G*), such matters have had little or no on-going monitoring by any entity.

These cases stay “open” and operative until terminated – usually at the death of the person under guardianship. During this time, those persons under “legal protection” are nevertheless vulnerable to exploitation and abuse. An estimated 7,000 cases are active, with individuals under guardianship and their estates in need of monitoring at any one time.

The Supreme Court and its Committee on Guardianships and Conservatorships, with membership representative of wide interests in these types of cases, has been actively piloting programs for monitoring these cases and developing meaningful data to determine future directions and programs to protect citizens pursuant to its 2005 charge from the legislature and Governor as set forth in this *Mission Statement* adopted by the Committee:

Committee Mission Statement

Create a workable, user-friendly and affordable structure for reporting and monitoring of cases regarding persons and their estates under guardianship and/or conservatorship with possible legislative changes and funding methods to implement the goals and objectives of the structure adopted.

Guardianship and Conservatorship Pilot Programs

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Significant Progress Made in Monitoring and Tracking of Conservatorship Cases in 2007

Uniform inventory and annual reporting forms have been developed and adopted and are now being used in the six pilot counties designated in 2006 (Ada, Bannock, Bonner, Bonneville, Caribou and Payette). Procedures are in place to ensure the timely filing of such reports, as is required by law. “Best practices” are being developed, distributed and utilized in these six counties with the intent to propose their use state-wide. Court clerks have been trained and are actively monitoring filings and will be implementing a new ISTARS module in the Court’s data system relating to timely and accurate filings of required reports.

Research Project Collects Reporting Data

An in-depth study of three years’ of conservatorship filings in the six pilot counties is now complete with some preliminary findings. The data was collected by having a copy of each file reviewed by a “Third Party” professional to assess, independent of the issuing court, the accuracy and completeness of filings and also to identify potential problems. The issuing court has then been alerted of the need for possible action on compliance measures and sanctions, if necessary.

Several models for the court’s handling of cases not in compliance with the law (either reporting problems or substantive problems of abuse of estates) are in use so that policies and procedures for use throughout Idaho can be implemented. The recommendations for state-wide reporting and monitoring policies and procedures are scheduled to be completed by March 2008.

Preliminary Analysis of Research of Pilot Counties’ Cases Distressing, Clearly Demonstrating the Need for Close Monitoring of All Such Guardianship and Conservatorship Cases

The Court’s Committee has contracted with the Boise State University Center for the Study on Aging to perform a statistical analysis of the data extracted by the six pilot counties (going back for the three year period 2003-2006).

Below are some of the more significant findings:

- ✓ The guardian in each case has a responsibility to file an inventory of the estate at the outset, followed by regular annual reports. In five of the six pilot counties (not counting Ada County, where a Guardianship Monitoring Program has been in place for almost a decade), the percentage of cases where required annual reports (accountings) were filed was approximately 30%, meaning that 70% of all conservatorship reports in these counties were not filed until this pilot project began. In Ada County, on the other hand, where the filing of required reports has been tracked, the filing compliance rate is approximately 85%. The monitoring of filings of required reports works! Appropriate methods will be implemented statewide to monitor compliance with guardianship and conservatorship orders issued by the courts.
- ✓ The amount and extent of assets of those under guardianship and conservatorship is significant. In the six pilot counties (Ada, Bannock, Bonner, Bonneville, Caribou, and Payette) the total of the “beginning assets” (amount in the estates at the time the court created the legal framework) ***was \$88 million. This sum was derived from 562 cases.*** Of this total number of cases, ***only 25 cases had “total beginning assets” greater than \$1 million.*** This is highly significant since most individual cases do not have large amounts of assets. This logically results in a lesser degree of oversight and concern, thus making those under guardianship even more vulnerable to exploitation. ***This is particularly troubling in light of the finding that in approximately 70% (except for 85% in Ada County) of the cases no reports were filed, much less any kind of review conducted.***

Guardianship and Conservatorship Pilot Programs

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Legal Representation of Persons under Guardianship a Major Issue

Individuals under guardianship by court order have, at the outset of the proceedings that created the guardianship and/or conservatorship, legal representation in the form of a *guardian ad litem* (GAL) (an attorney appointed by court order and paid for out of the estate of the proposed ward). However, most of these GALs do not continue in their representation of the estate and/or ward, in spite of the legal mandate to do so (*I.C. §15-5-303(b)*, *I.C. §15-5-310*).

A major issue for the Committee has been to address procedures and protocol for the appointment of GALs in cases where the estate is indigent and there are no funds to employ an attorney/GAL to address outstanding issues. Pilot funds are currently being used for court-appointed GALs during the pilot project. Recommendations for long-term funding of such attorneys will be developed and made by the Committee by June 2008.

What to Expect in 2008

In addition to drawing upon the experience in the six pilot counties, the Committee intends to address and make recommendations to the Supreme Court and Legislature in the following areas:

- Perform a systematic and thorough audit and review of reports filed (with a possible distinction between “professionals” and families and/or agencies);
- Develop web-based reporting (at least as far as annual reporting is concerned);
- Propose a uniform system for the investigation and verification of the status of those under guardianship of [volunteer] Court Visitor Programs in all counties and/or districts;
- Recommend whether or not the present county Boards of Community Guardians are a functional alternative for cases where there is no available person to act as guardian, or whether an Office of Public Guardian would be more effective, or some combination of such entities is necessary;
- Strengthen “Court links” with community groups and pertinent government agencies (e.g., Adult Protection Services);
- Develop and adopt standards of practice for guardians and conservators; and
- Consider possibly licensing guardians and conservators (again, with a distinction between “professionals”, families and/or agencies).

Goals for Fiscal Year 2009-10 and Beyond

- Implement comprehensive training for court staff and all court-appointed guardians and conservators
- Develop handbooks, videos and other resources for training and also general use
- Develop funding models for various programs
- Develop “best practices” for various-sized counties and also judicial districts
- Review statutes and rules to see if and where changes are needed (for example, do we want to consider adoption of the *Uniform Guardianship and Protective Proceedings Act* which requires an “independent monitoring system”?)
- Determine if guardianship and conservatorship files should be open to the public or should they be considered “closed” or confidential files?
- Complete a review of Guardianships for the Treatment and Care of Developmentally Disabled Children (Title 66 Cases)
- Strengthen guardianships/conservatorships for minors (with particular attention to “grandparents raising grandchildren” issues)

The Committee is committed to finding practical, effective, and well-administered methods for accomplishing the tasks set forth in this report.

Contact

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